



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert H. Corbin

June 7, 1989

The Honorable Joe Albo, Jr.
Gila County Attorney
1400 E. Ash Street
Globe, Arizona 85501

Re: 189-046 (R89-057)

Dear Mr. Albo:

Pursuant to A.R.S. § 15-253(B) this office has reviewed your April 10, 1989 opinion letter to the Superintendent of Hayden/Winkelman School District No. 41 regarding school district rules for excessive pupil absenteeism.

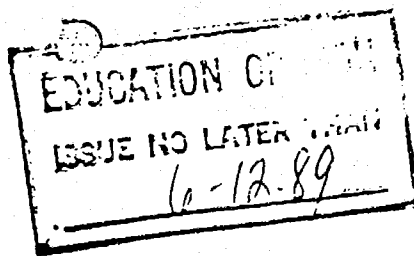
We concur with your conclusions that 1) A.R.S. § 15-843(B) requires the school district governing board to prescribe rules relating to the discipline, suspension or expulsion of pupils after consultation with teachers and parents of the district; 2) according to A.R.S. § 15-843(B)(1) those rules must include penalties for excessive pupil absenteeism that include failure in a subject or failure to pass a grade and 3) A.R.S. § 15-841(B) limits the expulsion of pupils for excessive absenteeism to pupils who are not legally required to attend school pursuant to A.R.S. § 15-802.

We revise your conclusion about the legality of excessive absenteeism rules. To be legal, the rules must be adopted pursuant to A.R.S. § 15-843; in addition, they must be reasonable, bear a rational relationship to the school's role in providing a public education and comply with constitutional due process. Ariz. Att'y Gen. Ops. 186-009, 186-044 and 182-139.

Sincerely,

BOB CORBIN
Attorney General

BC:LPF:ms



Gila County Attorney

1400 E. ASH STREET

Globe, Arizona 85501

(602) 425-3231

EXT. 298

Joe Alba Jr.

April 10, 1989

R89 057

Pardee

Mr. Lalo Serrano, Superintendent
Hayden/Winkelman School

District No. 41

P.O. Box 409

Winkelman, AZ 85292

Dear Mr. Serrano:

You requested an opinion as to whether the Hayden High School District could fail a student for excessive unexcused absences. Yes.

A.R.S. §15-843(B) requires the governing board of the school district to act, after consultation with teachers and parents, in prescribing rules for the discipline, suspension and expulsion of pupils. A.R.S. §15-843.(B)(1) requires the school district to enact "[p]enalties for excessive pupil absenteeism including failure in a subject, failure to pass a grade, suspension or expulsion." If the Hayden/Winkelman governing board has created the policy referred to in your request for an opinion dated March 8, 1989, after consultation with parents and teachers, then the policy as stated would be legal. I refer your attention also to Op.Atty.Gen. 186-009, a copy of which is attached for your convenience, which limits the expulsion of students for excessive absenteeism to those students past the age where compulsory school attendance, as prescribed in A.R.S. §15-802, is required.

A copy of this opinion is being sent to the Attorney General for his review pursuant to A.R.S. §15-253. If no action is taken by that office within 60 days, the opinion will be deemed confirmed.

Sincerely,

Candace B. Pardee

Candace B. Pardee
Deputy County Attorney

CBP:pt

enclosure

A. Alba Jr.
4-13-89

LEVEL 2 - 2 OF 4 CASES
Office of the Attorney General of the State of Arizona

RE: 180-009 (RGS-135)

Slip Opinion

January 13, 1986

REQUESTBY:

The Honorable Stephen D. Neely
Pima County Attorney
117 North Church Avenue
Suite 300
Tucson, Arizona 85701-1117

OPINION:

Pursuant to A.R.S. § 15-253(B), we concur with the conclusions set forth in your letter dated November 8, 1985 to the Amphitheater Public Schools concerning the suspension and expulsion of students due to excessive absenteeism. We take this opportunity to describe changes in Arizona law which have occurred since

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our discussion of the subject in Ariz. Atty. Gen. Op. 182-139. 782-101

A.R.S. § 15-843(B)(1) specifically provides that suspension or expulsion, as defined in A.R.S. § 15-840, is an appropriate penalty for excessive pupil absenteeism and sets forth the procedures a governing board of a school district must follow in imposing these penalties. The governing board of the school district must, in consultation with teachers and parents of the school district, prescribe rules for the discipline, suspension or expulsion of pupils. However, 'No pupil may be expelled for excessive absenteeism only if the pupil has reached the age or completed the grade after which school attendance is not required as prescribed in A.R.S. § 15-802.' A.R.S. § 15-841(B). That provision was added by Laws 1984 (2d Reg. Sess.) Ch. 393, § 1 and codifies in part the conclusions reached in Ariz. Atty. Gen. Op. 182-139; 178-242 that truancy is not a justification for suspension or expulsion of a student who is subject to the compulsory attendance statute.

By Laws 1984 (2d Reg. Sess.) Ch. 379, § 11, A.R.S. § 15-802 regarding compulsory school attendance was amended to excuse from its provisions a child who has completed 'the high school courses necessary for completion of grade ten.' Before that amendment, any child who had completed the common school courses was excused from compulsory school attendance. In Ariz. Atty. Gen. Op. 182-139 we concluded that truancy could not be the basis for suspension or

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expulsion of students 'in grades 1 through 6.' Because of the change in the compulsory attendance statute the restriction now applies to any student in grades 1 through 10.

Under current Arizona law, a school district must prescribe rules setting forth penalties for excessive pupil absenteeism and those penalties may include failure in a subject, failure to pass a grade, suspension or expulsion. A.R.S. @ 15-843 (3)(1). However, the penalty of expulsion may be imposed only if the student has reached the age, 16 years, or completed the grade, grade 10, after which school attendance is not required. A.R.S. @ 15-841(3). n1

n1 A.R.S. @ 15-841(3) relates to expulsion and not to suspension from school. However, for the reasons set forth in Ariz. Atty. Gen. Op. 178-242 we conclude that with respect to students subject to the compulsory attendance statute, suspension is not allowed as a penalty for excessive absenteeism.

November 8, 1985

Mr. Alfred C. Strachan, Associate to Superintendent, Staff Relations,
Amphitheater Public Schools, 701 W. Wetmore Road, Tucson, Arizona 85705

Slip Opinion (A2) January 13, 1986

Re: Discipline, Suspension and Expulsion for Excessive Pupil Absenteeism

Dear Mr. Strachan:

In response to your letter of October 22, 1985, I have reviewed the following questions for the District:

1. Is excessive absenteeism a sufficient cause to suspend or expel a student who is sixteen years of age or older?
2. Is excessive absenteeism a sufficient cause to suspend or expel a student who has not attained the age of sixteen?
3. What would the law deem excessive absenteeism?
4. Is there any correlation between withdrawing from the ADM count and suspending or expelling a student due to excessive absenteeism?
5. May a student who is sixteen years of age or older be dropped from one or more courses due to excessive absenteeism?

Slip Opinion (A2) January 13, 1986

6. May a student who has not attained the age of sixteen be dropped from one or more courses due to excessive absenteeism?

7. Would a policy allowing students to be dropped from one or more courses due to excessive absenteeism have to distinguish between different courses?

Before answering these questions, a brief discussion of A.R.S. § 15-801 - 843 is appropriate.

A.R.S. § 15-843(3) provides in pertinent part:

The governing board in any school district shall, in consultation with the teachers and parents of the school district, prescribe rules for the discipline, suspension and expulsion of pupils. The rules shall include at least the following:

1. Penalties for excessive pupil absenteeism including failure in a subject, failure to pass a grade, suspension or expulsion.

The school board must exercise its authority to prescribe these rules for discipline, suspension and expulsion in a manner permitted by statute. *Campbell v. Harris*, 131 Ariz. 109, 638 P.2d 1355 (App. 1981).

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A.R.S. § 15-840 (3) sets forth penalties for excessive absenteeism which include failure in a subject, failure to pass a grade, suspension or expulsion. However, A.R.S. § 15-841(3) provides that a pupil may be expelled for excessive absenteeism only if the pupil has reached the age or completed the grade after which school attendance is not required as prescribed in § 15-802. According to A.R.S. § 15-802, every child between the ages of eight (8) and sixteen (16) years must attend school unless it is shown to the satisfaction of the county superintendent that the child falls within a statutory exception to compulsory education. One exception to the compulsory education rule is that the child has completed high school courses necessary for completion of grade ten (10) as prescribed by the State Board of Education. See A.R.S. § 15-802(B)(4).

In sum, Amphitheatre's School District's governing board must prescribe rules for the discipline, suspension and expulsion of students. The rules prescribed must include penalties for excessive pupil absenteeism such as failure in a subject, failure to pass a grade, suspension or expulsion. A pupil may be expelled for excessive absenteeism only if the pupil is no longer subject to the compulsory attendance law. The board may prescribe penalties in addition to those set forth in the statute as long as such penalties are reasonable and bear a rational relationship in the school's role in providing a public education. Attorney General Opinion 162-139.

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In response to question 1:

Excessive absenteeism is a sufficient cause to suspend or expel a student who is sixteen (16) years of age or older as long as the governing board has prescribed rules which allow for such suspension or expulsion.

In response to Question 2: -----

Excessive absenteeism is a sufficient cause to suspend or expel a student who has not attained the age of sixteen (16) only when all of the following apply:

- a. The student has completed the high school courses necessary for completion of grade ten (10) as prescribed by the State Board of Education.
- b. The county school superintendent has determined that the student has completed the course work necessary to complete grade ten (10) and therefore meets the requirements of A.R.S. @ 15-802(B)(4). (This determination is made on a case by case basis and a competency test may be one factor she considers.)
- c. The governing board has prescribed rules which allow for suspension or expulsion.

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In response to Question 3:

The statutes do not define excessive absenteeism. The governing board may prescribe the rules defining excessive absenteeism as long as the rules are reasonable and bear a rational relationship to the school's role in providing a public education. In determining how many absences justify suspension or expulsion, the board must weigh the severity of the punishment against the severity of the conduct. See Attorney General Opinion 182-139. Kelly v. Martin, 16 Ariz.App. 7, 490 P.2d 836 (1971).

In response to Question 4:

There is no correlation between withdrawing a student from the average daily membership (ADM) count and suspending or expelling a student due to excessive absenteeism. A.R.S. § 15-901(A)(2) sets forth attendance information for computing the ADM count which is an average used for funding and budget computations. A.R.S. § 15-841 et. seq. governs pupil discipline proceedings including suspension and expulsion for excessive absenteeism.

A student withdrawn from the ADM count pursuant to A.R.S. § 15-901 should be considered to have withdrawn himself from school and must be allowed to return to school whenever he decides to re-enroll. See Attorney General Opinion

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178-242.

In response to Question 5:

Dropping a student from a course because of excessive absenteeism is a penalty. A student who is sixteen (16) years of age or older may be dropped from a course due to excessive absenteeism, provided that the governing board's rules include such a penalty. The penalty must be reasonable and bear a rational relationship to the school's role in providing a public education. A student who is dropped from a course due to excessive absenteeism is entitled to due process.

In response to Question 6:

A student who has not attained the age of sixteen (16) may be dropped from a course due to excessive absenteeism only when all of the following apply:

- a. The student has completed the high school courses necessary for grade ten (10) as prescribed by the State Board of Education.
- b. The county school superintendent has determined that the student has completed the courses necessary for completion of grade ten (10) as prescribed

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by the State Board of Education and therefore meets the requirements of A.R.S. @ 15-802(B)(4).

c. The governing board has prescribed rules which allow for the penalty of dropping a student from a course due to excessive absenteeism.

Students who have not attained the age of sixteen (16) and have not completed grade ten (10) may face other penalties for excessive absenteeism such as failure in the subject and failure to pass a grade as long as these penalties are included in the governing board's rules.

In response to Question 7:

A policy allowing students to be dropped from a course due to excessive absenteeism should apply to any course.

This opinion is being forwarded to the Attorney General for concurrence, review or a revision pursuant to A.R.S. @ 15-253(B). Unless circumstances require immediate action upon this opinion, you should await the response of the Attorney General before acting on the opinion set forth above.